

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 318 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA Sd/-

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
Nos. 1 to 5 No.

-----  
STATE OF GUJARAT

Versus

NAROL GRAM PANCHAYAT

-----  
Appearance:

GOVERNMENT PLEADER for Petitioner

MR RN SHAH for Respondent No. 1

-----  
CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 10/03/98

ORAL JUDGEMENT

This is defendant's Second Appeal.

Facts giving rise to this appeal are that the respondent Narol Gram Panchayat filed a Suit for declaration that the order dated 27.4.1976 passed by the Collector resuming grazing land which vested in the respondent was illegal, malafide, null, void and also for permanent injunction restraining the defendant State of

Gujarat from implementing or executing that order.

Land in suit bearing survey no.105 area 12 Acres 3 Gunthas was given by the State Government to the plaintiff Gram Panchayat for being used as grazing land. In the year 1973, the defendant proposed to resume the suit land for settling weaker section of the society having no house. The proposal was resisted by the plaintiff-respondent. However, some people known as "Saranias" trespassed over the suit land covering area of 2619 sq.yds.and started raising construction. The plaintiff-respondent called upon them to remove encroachment but with no result. Ultimately the plaintiff requested the Taluka Development Officer and other officers of the State viz. District Development Officer to take action but the plaintiff was advised by them not to take hasty action. On 8.10.1974 the Collector issued a show cause notice as to why the suit land should not be resumed on the ground that the plaintiff did not use it for the grazing purpose and committed breach of the terms of vesting by allowing sarania to stay by erecting huts. The plaintiff objected the proposal but the Collector by an order dated 27.4.1976 resumed the said land from the plaintiff. Hence the suit for declaration and permanent injunction was filed.

The suit was resisted by the defendant-appellant denying the allegations made by the plaintiff-respondent.

The Trial Court found that the case of the plaintiff-respondent was proved and accordingly it declared the impugned order dated 27.4.1976 to be illegal and also granted permanent injunction restraining the defendants from implementing or executing the said order against the plaintiff.

The appeal was preferred which was dismissed.

The only substantial question of law formulated in the appeal was whether in the facts and circumstances, the interpretation put on Section 96(4) of the Gujarat Panchayat Act, 1961 by the Appellate Court by holding that the power to resume land can only be exercised if there is well founded ? If no what is its effect ?

Learned Assistant Government Pleader Ms.Valikarimwala and learned Counsel Shri R.N.Shah have been heard. Learned Counsel for the respondent submits that in the year 1984 there was a compromise between Narol Gram Panchayat and State of Gujarat whereby the

land in dispute was given to the State of Gujarat. This happened during the pendency of this Second Appeal. He further informed and states that Narol Gram Panchayat is now no more in existence. It is an admitted case of the parties now at this stage that the land in suit belongs to the State of Gujarat. It is further clear from the statement of Shri R.N.Shah, learned Counsel for the respondent that Narol Gram Panchayat does not exist now and in view of earlier compromise in the year 1984, the disputed land was given to the State Government. In view of these admitted facts the action of the State Government or Collector issuing notice dated 8.10.1974 or passing order dated 27.4.1976 cannot be said to be illegal, null or void. The two Courts below were therefore not correct in passing the decree for declaration and permanent injunction. The appeal therefore succeeds and is allowed. Judgements and decrees of the two Courts below are hereby set aside. In the facts and circumstances of the case, the parties shall bear their own costs of this appeal.

Sd/-

(D.C.Srivastava, J)

---

m.m.bhatt